

Serial No. 10/662,949

REMARKS/ARGUMENTS

Applicant's invention is recited in claims 17-21 of the pending application.

In the pending Official Action, the Examiner has provisionally rejected the pending claims under the judicially created doctrine of double patenting over claims 19-23 of copending Application No. 09/925,423 (the parent application hereof).

Additionally, the Examiner requires the original patent, or a statement as to loss or inaccessibility of the original patent, to be received before the present reissue application can be allowed.

Finally, the Examiner notes acceptance of the drawing changes received September 16, 2003.

TRAVERSE

1. Double Patenting

Applicant courteously traverses the provisional rejection for the reasons set forth hereinbelow.

As noted during a telephone discussion conducted August 27, 2004, with the Examiner, the double patenting rejection is erroneous as a matter of fact because the allegedly doubly patented claims 19-23 had been cancelled from the parent application. In view of the Examiner's indication at the time of the discussion that the file of the copending (parent) application, Serial No. 09/925,423 was not immediately available, applicant provides herewith three exhibits in evidence of cancellation of those claims.

EXHIBIT 1

Exhibit 1 provides a copy of an amendment filed under 37 CFR 1.312 in the parent application. The amendment was filed (by mail) on August 13, 2004, at the time of payment of the Issue Fee for the parent application.

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As is clearly noted from page 2 of the amendment provided in Exhibit 1, claims 19-23, which are included in claims 14-23, were cancelled by that amendment.

EXHIBIT 2

Exhibit 2 provides a copy of a date stamped receipt by the Office of Initial Patent Examination. As clearly confirmed thereby, the USPTO received the Amendment, as well as the Issue Fee, on August 15, 2003.

It is therefore clear that applicant had requested cancellation of claims 19-23 from the parent application and thus is not doubly claiming the subject matter thereof.

However, due to apparent internal error within the USPTO, the amendment of August 13, 2003 was not matched with the application for a period of time of almost one year. Nonetheless, the amendment was subsequently entered.

EXHIBIT 3

Exhibit 3 provides a copy of a Response to applicant's Rule 312 Communication, dated August 3, 2004. As shown at page 2 therein, "The amendment filed on 15 August 2003 under 37 CFR 1.312 has been considered, and has been entered [emphasis added]."

Therefore, inasmuch as the amendment canceling claims 19-23, among others, has been entered, the claims on which the double patenting rejection is based do not, in fact, exist in the parent application and, upon issuance of the same, will not exist in the issued patent.

Accordingly, allowance and issuance of pending claims 17-21 will not, in fact, result in claims of common subject matter.

Applicant therefore respectfully submits that withdrawal of the rejection of claims 17-21 under the judicially created doctrine of double patenting over claims 19-23 of copending Application No. 09/925,423 is in error, and that reconsideration and withdrawal of the same is in order.

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2. Requirement for the Original Patent

Although an applicant is required to surrender the original deed in order to obtain reissue, applicant respectfully traverses such a requirement in the present application as being misplaced and courteously requests reconsideration of the same.

More particularly, applicant had previously surrendered the deed in the parent application. Indeed, unless applicant had met the requirement for surrender the Examiner would not have allowed the parent application which, as is apparent by applicant's payment of an Issue Fee therein, had been allowed by the Examiner.

In support of applicant's request for reconsideration, applicant submits herewith Exhibits 4 and 5, as follows.

EXHIBIT 4

Exhibit 4 provides a copy of a paper filed July 23, 2002 in the parent application. The paper is entitled, in part, "Response to Quayle Action Submitting Original Patent ...", and includes therein a copy of the cover of the Deed as submitted therewith.

Therefore, it is apparent that applicant has previously submitted the original patent.

EXHIBIT 5

Exhibit 5 provides a copy of a date stamped receipt, confirming receipt by the USPTO of the original deed for US Patent 5,937,095, the patent whose surrendered is required by the Examiner.

Inasmuch as the OIPE has confirmed receipt of the original patent, it is courteously submitted that reconsideration and withdrawal of the Examiner's requirement for the original patent or for a statement of loss or inaccessibility thereof is in order.

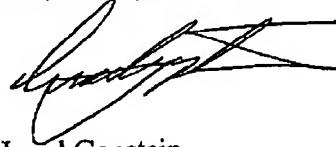
Having demonstrated that the double-patenting rejection in the pending Action is not appropriate, and that the requirement for submission of the original patent has already been met,

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and in view of the foregoing, it is respectfully submitted that the application is in condition for allowance and an early indication of the same is courteously solicited. In order to expedite resolution of any remaining issues and further to expedite passage of the application to issue, the Examiner is respectfully requested to contact the undersigned by telephone at the below listed local telephone number if any further comments, questions or suggestions arise in connection with the application.

The Commissioner is hereby authorized to charge payment of any fees associated with this communication or credit any overpayment, to Deposit Account No. 50-1088, including any filing fees under 37 CFR 1.16 for presentation of extra claims and any patent application processing fees under 37 CFR 1.17

Respectfully submitted,



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